



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Omni Analysis

File: B-233372

Date: March 6, 1989

DIGEST

Protest is sustained in part where awardee failed to disclose material changes in the availability of its proposed key personnel which occurred between the submission of initial and best and final offers.

DECISION

Omni Analysis protests the award of a cost-plus-fixed-fee contract for a base year with three 1-year options to Advanced Technology, Inc. (ATI), under request for proposals (RFP) No. N60921-88-R-0113, issued by the Naval Surface Warfare Center for training support services. The protester objects to the agency's evaluation of technical and cost proposals.

We sustain the protest.

The RFP was issued on February 29, 1988, and provided that cost considerations would be secondary to considerations of technical competence in the selection of an offeror. Technical aspects were to be evaluated on the basis of three factors: (1) personnel, and (2) management and understanding, which were equal in importance, and (3) corporate experience, which was least important. Although performance was scheduled to begin with six key personnel and build up to a maximum level of 18 individuals some time beyond the base contract year, offerors were required to provide resumes for all 18 key personnel positions and proposals were evaluated with respect to all 18 positions. In addition, the RFP stressed the importance of demonstrating the availability of proposed key personnel as it specifically required offerors to submit signed letters of intent from individuals proposed who were not presently in their employ.

Seven initial proposals were submitted by the April 28 closing date. ATI and Omni were determined to be in the competitive range. During the technical evaluation, ATI received a score of 875 out of a maximum possible 1,000 points; Omni's score was 800. The primary technical difference between the proposals was in the area of proposed personnel. ATI's entire personnel team was found to be strong. While Omni's basic personnel team was found to be strong in several areas, the future availability of its other key personnel was questioned. ATI's proposed costs were \$3,823,019; Omni's were \$4,058,163. Following discussions, offerors were requested to submit best and final offers (BAFOs) by August 26.

ATI made no changes to its technical proposal. While Omni provided further technical explanation as requested during discussions, a reevaluation resulted in no scoring changes to either offeror's technical proposal. ATI reduced its proposed costs to \$3,635,015 and these were regarded as realistic by the agency; Omni reduced its proposed costs to \$3,313,882 but, due mainly to the Navy's concerns about Omni's large reduction in its direct labor costs, the agency adjusted them upwards to a figure of \$3,899,715.47. Award was made to ATI on October 18.

Omni questions the technical and cost evaluations on several grounds. However, the primary basis of Omni's protest is that, by the time ATI submitted its BAFO, 3 of the 18 individuals identified in its original proposal, and for which the firm had received evaluation credit under the heavily-weighted personnel factor, had left its employ. Omni argues that, in failing to apprise the agency of the employees' departures in its BAFO, ATI failed to conform to the RFP requirement that letters of intent be submitted by those proposed but not currently employed by the offeror and knowingly misled the Navy as to the identity and availability of persons it was proposing.

Both ATI and the agency concede that two of the individuals mentioned by Omni had, in fact, left the awardee's permanent employ prior to the submission of BAFOs. With respect to the first individual--a highly-rated technical librarian scheduled to be among the first six individuals to commence performance--both the agency and the awardee state that since an admittedly less competent but nonetheless adequate substitute librarian was finally provided from among the 18 individuals originally proposed by ATI, the awardee's failure to amend its BAFO was immaterial. With respect to the second individual--an analyst not scheduled among the six to begin performance--the awardee first reported that

the individual had not, in fact, left ATI's employ as alleged, but subsequently amended this position to indicate that he had departed. Both the awardee and the agency now argue that this departure was immaterial because the individual was not among the first group of employees scheduled to commence performance during the base year.^{1/}

Where an offeror knows prior to submission of BAFOs that proposed key employees are no longer available, the appropriate course of action is to withdraw the individuals and propose substitutes who will be available. See Informatics General Corp., B-224182, Feb. 2, 1987, 87-1 CPD ¶ 105. To do otherwise is, in effect, to misrepresent the availability of proposed personnel, a circumstance which impermissibly compromises the validity of the technical evaluation, notwithstanding the fact that post-award substitutions of key personnel may later be made and approved by the agency pursuant to a clause in the awardee's contract. Ultra Technology Corp., B-230309.6, Jan. 18, 1989, 89-1 CPD ¶ _____. This is particularly true where, as here, the factual accuracy of an offeror's submissions may have had a material influence on the evaluation of the proposals. Informatics, Inc., 57 Comp. Gen. 217 (1978), 78-1 CPD ¶ 53.

Here, the record shows that two of the individuals proposed by ATI were no longer available to perform after submission of its initial offer; yet ATI's BAFO did not reflect this fact and actually contained continued assurances that the personnel team it had originally proposed remained intact.

It is not clear whether the selection decision would have been different had ATI's BAFO accurately reflected the personnel available for this contract. ATI had a 75-point

^{1/} The explanation regarding the third individual of concern to Omni--an analyst scheduled to commence performance upon award--was that he was temporarily laid off after the submission of initial proposals with a verbal understanding that he would rejoin active employment upon contract award. The record indicates that this individual gave ATI a letter of intent after it had submitted its BAFO but before award; while this may indicate that ATI was not in technical compliance with the RFP requirement for a letter of intent, we do not believe that any prejudice resulted because ATI's proposal was evaluated on the basis of this individual's availability, the letter of intent was submitted before award and the individual is in fact performing as originally proposed.

advantage in technical score, as well as a cost advantage of approximately \$264,000; it thus appears that ATI's technical score would have had to be significantly reduced for the selection decision to have been different. On the other hand, technical competence was weighted higher than cost, personnel was one of the two most heavily weighted technical evaluation criterion, and it is clear from the evaluation record that the evaluators thought highly of the two individuals ATI proposed, particularly the librarian, who in fact were not available for this contract.

Moreover, the evaluation was based on 18 proposed employees, not some lesser number, and the evaluators specifically noted that ATI was strong in the area of personnel availability since all 18 of ATI's proposed key people actually worked for ATI; how the evaluators would have reacted to whatever ATI would have proposed as replacements for the two individuals originally proposed is, of course, not known, but it does seem apparent that the evaluators would have been less impressed with substitute personnel. Furthermore, while the agency and ATI argue that the loss of the proposed analyst was immaterial because he was not among those scheduled to work under the contract during the base year, we simply point out again that in the evaluation no distinction was made between employees scheduled to begin work immediately and those who were to start later--the evaluation of personnel took into account all 18 key people. In effect, ATI proposed only 16 key personnel when the RFP required offerors to propose 18 such individuals, while the agency believed it was evaluating 18 individuals who were in fact available for the contract.

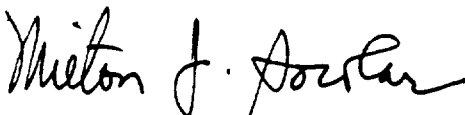
We also find no merit to ATI's argument that it did all that was required by the RFP because, when it submitted its initial proposal in April 1988, "all eighteen proposed individuals were employees of ATI," and that personnel substitutions could be made during contract performance under the Key Personnel Requirements Clause. Given the evaluation emphasis on proposed personnel, we do not believe an offeror can rely on such a clause as a substitute for the fact that some of its proposed key people will not be available.

Accordingly, we conclude under the circumstances of this case that the award to ATI was improper and we sustain the

protest on this basis.^{2/} See Ultra Technology Corp., B-230309.6, supra.

Since base period performance is underway, we will not disturb the award at this point. However, in light of our concern about what happened here and its effect on the integrity of the procurement system, we are recommending that the options in ATI's contract not be exercised. We also find that the protester is entitled to recover its reasonable costs of filing and pursuing this protest, including attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.6(d)(1) (1988).

The protest is sustained.


for Comptroller General
of the United States

^{2/} We have reviewed the remainder of the agency's technical evaluation and its cost evaluation in the context of Omni's other protest allegations and find that they were conducted reasonably.